STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari - PCR - Common Pleas - Other
APPEAL FROM HORRY COUNTY
Common Pleas Court
Honorable H. Steven DeBerry, IV

Appellate Case No. 2023-000747
Trial Court Case No. 2020-CP-26-4711

Marquis McDonald ..... Petitioner,

v.

The State of South Carolina ..... Respondent

PETITION FOR WRIT OF CERTIORARI

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Statement of the Case

Procedural History

On March 1, 2013, Marquis McDonald turned himself into the Sheriff's Department for Horry County. He was arrested for the murder of Anthony Liddell which occurred on February 26, 2013. He was tried on October 6, 2014 to October 9, 2014. He was convicted of Armed robbery and murder. He was sentenced to 45 years for the murder and 30 years for the armed robbery.

Mr. McDonald appealed his conviction to the South Carolina Court of Appeals. The conviction was affirmed on July 12, 2017. Mr. McDonald, through counsel, filed a Post Conviction Relief Application on August 11, 2020.[1] On the day of the hearing an amended Application was filed.

The Post Conviction Relief hearing was held on November 29, 2022 before Judge H. Steven DeBerry. On March 14, 2023, Judge DeBerry issued an order denying relief to Mr. McDonald. The Order was filed on March 17, 2023 and received by counsel on March 21, 2023. On March 30, 2023, counsel for Mr. McDonald filed a motion to alter or amend the order. The motion was denied on April 4, 2023. The order was filed on April 10, 2023. Mr. McDonald filed his Notice of Intent to Appeal on May 8, 2023.

Factual History

On February 26, 2013, Marquis McDonald was to meet Anthony Liddell at night in the

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[1] The delay in filing the Post Conviction Relief application was caused by the failure of Appellate counsel to notify Mr. McDonald of the fact the court of appeals had ruled against him. The State initially moved to dismiss the Application on the ground that it was not timely. After a hearing and further investigation, the State withdrew this claim.

parking lot of a residential housing complex for Coastal Carolina University. The purpose of the meeting was to purchase marijuana from Mr. Liddell. Mr. McDonald had previously purchased marijuana from Mr. Liddell at the same location. App. at 588, ll 14-21, Accompanying Mr. McDonald was Stephon McLain.

The case presented two different theories as to what happened that night. The theory of the state was that McDonald pulled a pistol in an attempt to rob Mr. Liddell. The state contended that Mr. McDonald, in an attempt to rob Mr. Liddell, shot him while they were both outside the automobile standing on the driver's side of the automobile that Mr. McDonald was driving. App. at 99, ll 22-25; 100, ll 4-7; 161, ll 4-6. The state contended that Mr. McDonald then fled the scene with Mr. McLain.

Mr. McDonald testified that he dove out of the automobile when Mr. McLain unexpectedly pulled a pistol on Mr. Liddell. He stated he never fired a weapon. He also testified he did not know Mr. McLain had a firearm and there was no plan to rob Mr. Liddell. App. at 593, ll 19-21; 594, ll 1-6. After the shots were fired, Mr. McDonald re-entered the automobile and left the scene. He did not believe Mr. Liddell had been shot as he was still standing when he left the scene. This witness for the state also testified that Mr. Liddell was standing when the automobile left, but collapsed shortly thereafter. App. at 161, ll 4-6.

Agent Sabrina Ann Fellers, with the State Law Enforcement Division, arrived at the crime scene to conduct an analysis of the crime scene. On the ground, next to a white SUV, found a cell phone and cigarette pack. App. at 243, ll 1-9. The evidence later established that the cell phone and cigarette pack found on the ground belonged to Mr. McDonald. Mr. McDonald explained the cell phone and cigarette pack were in his lap when the first shot

occurred and he dove out the driver's side door. App. at 594, 8-15. Also found next to the white SUV was a single shell casing. App. at 243, ll 15-18. Agent Fellers was not qualified as a crime scene reconstruction expert. As a result, she could not give any opinion as to the direction of travel as to the two bullets that entered the back passenger door of the SUV. App. at 274, ll 16-19.

The Agent further observed two bullet defects in the rear passenger door of the white SUV. App. at 244, ll 7-8. Based upon her observations, the bullets appeared to be going in a slight upward angle. App. at 254, ll 17-25. The agent who examined the Acura that had been driven by Mr. McDonald was Tiffany Hezel. She noticed several defects in the interior of the vehicle. She was unable to state the cause of the defects. App. at 301, ll 11-23. She was able to place trajectory rods through some of the "defects." App. at 302, ll 10-15. She did not notice any damage to the back car windows. App. at 312, ll 14-19. She admitted she was not a crime scene reconstruction expert. As far as she knew, no crime scene reconstruction had been done on the vehicle. App. at 346, ll 6-21. James L. Johnson, another investigator on the case, testified the investigators never attempted to do a crime scene reconstruction. App. at 491, ll 7-15. Without having examined the Acura Mr. McDonald was driving, the investigator determined such a reconstruction would not have been helpful, as McDonald had had the Acura for about three or four days and could have cleaned up the car.

Many witnesses testified as to cell phone contents and cell tower information. The results of these examination were virtually of no importance as Mr. McDonald admitted he was at the scene and he was at the scene with Stephon McLain.

When Mr. McDonald was interviewed by the police, he originally told them only one shot was fired inside the car. App. at 479, ll 10-11; 486, ll 6-8. He also told the officers that Mr.

McLain arrived at the scene with Mr. Liddell. After Mr. McLain pulled out the pistol, he and Mr. Liddell tried to take the pistol from Mr. Liddell. After the weapon discharged, he told the officer he got out of the automobile on the driver's side. He then re-entered the automobile, struck Mr. McLain in the face, knocking him out of the automobile. He then left the scene. App. at 478, l 11 to 479, l 21.

He provided the police with a diagram as to the location of each person in the automobile. He stated Mr. Liddell was in the back passenger side and Mr. McLain was in the front passenger seat. App. at 484, ll 8-11. This left Mr. McDonald as the driver.

In his closing argument, the prosecutor made several scientific conclusions from the evidence presented at trial. He first argued, "They talked about the absence of crime scene reconstruction. It's irrelevant." App. at 644, ll 19-21. Without a crime scene expert, he then states, "People shoot in a car, it looks likes [sic] a flash bulb went off. Looks like Christmas or 4th of July. She didn't see that because the gun is pressed." App. at 647, ll 5-8. He continued, "But those shots were close, folks, that's why she doesn't see the muzzle flash." App. at 647, ll 18-21.

As to the bullet holes in the SUV next to Mr. McDonald's case, he stated, "It's through and through, as if somebody had been pressed up against the car and they're shot in the chest with one exit up the ribs and turns, and the other shot goes through his chest popping through that car." App. at 649, ll 2-6. As to the pistol being fired in the car he concluded, "If gunfire goes off in a car, he going to be deaf as a post. But he's not." App. at 652, ll 3-4. Finally he argued, "And the only way for those wounds to happen to Anthony without Marquis being damaged whatsoever is for him to be the shooter, him shooting as he grapples with him, cutting him from left to right, and when he turns shooting him through the chest, putting him down."

App. at 654, ll 8-12. No reconstruction expert is needed for the state if the solicitor is going to be his own reconstruction expert in closing.

At the Post Conviction Relief, the judge accepted Dr. Brent Turvey as an expert in crime scene reconstruction. Dr. Turvey painted a different picture from what the solicitor said in his closing. Dr. Turvey reviewed the autopsy report, the transcript of the trial and the photographs taken by the investigators, which numbered over 100. These photographs included the autopsy pictures. It further included pictures of the crime scene itself, including a white SUV at the scene. It further included the pictures of the automobile Mr. McDonald was driving that night.

After reviewing the autopsy report, the first conclusion made by Dr. Turvey was that he agreed with Dr. Edward Proctor that a wound to the right hand of Mr. Liddell could have been a defensive wound. App. at 529, l 22 to 530, l 17; App. at 18, l 1 to 19, l 14. Dr. Turvey attributed the wound to be either from the firearm or the actual projectile. He testified there appeared to be soot in the wound. He stated this indicated to him the shooter on this one shot was close to Mr. Liddell. App. at 18, ll 12-16.

In examining the pictures of the automobile Mr. McDonald was driving, Dr. Turvey noted that based upon the placement of the dowel rods which traced the trajectory of the bullet, the most reasonable conclusion was that the gunshot came from the front passenger side of the automobile. The shot would have been toward the rear driver's side door. As to the position of the shooter he stated, "I concluded is that it is more reasonable to infer it came from the passenger's seat. The person from the passenger's seat turning around right-handed and shooting into the back seat, behind the driver's seat." App. at 20, ll 21-25.

In examining the pictures of the white SUV found at the scene, Dr. Turvey made two conclusions. First, the scrapes at the bottom of the passenger door would be consistent with the door of the automobile next to it opening and hitting the passenger side door of the SUV. App. at 22, ll 9-13. The scrapings were also noted by the crime scene investigator. App. at 255, ll 15-16. Dr. Turvey agreed with the crime scene investigator that the two bullet holes in the SUV had a slightly upward trajectory. App. at 23, l 3-23; App. at 254, l 17-25. He concluded that the slight upward trajectory of the bullet was inconsistent with two people standing up and outside of the automobile and one of them being shot by the other. App. at 23, ll 22-25. He opined that the upward angle "[I]s more consistent with coming from a seated position inside the vehicle with the door open." App. at 27, ll 3-5.

He further testified that the finding of only one shell casing outside the vehicle is more consistent with them originating from inside the automobile of which Mr. McDonald was the driver. He stated if two or more shots had occurred outside the Acura driven by Mr. McDonald and between the white SUV, one would have expected to find more than one shell casing on the ground. App. at 27, ll 17-19. He stated one shell casing can be explained by one shot occurring within the automobile and landing in the lap of the person who quickly exited the vehicle or in the door jam and fell out when the door was opened. App. at 28, ll 6-10. He further noted that Mr. McDonald's cell phone being found on the ground near where the driver's side door would have been, is consistent with Mr. McDonald being the driver and quickly exiting the automobile. App. at 25, ll 16-24.

At the Post Conviction Relief hearing Gregory McCollum, the trial lawyer for Mr. McDonald, after hearing a portion of the testimony of Dr. Turvey, stated, "I mean the crime

scene seemed so obvious that in hindsight I wish I had an expert." App. at 39, ll 22-24. Mr. McCollum was also shown a SLED report showing that the shell casing found at the scene matched the shell casing found at another murder scene. He testified the cell phone records of Mr. McDonald established that he was not at the scene of the other murder at the time of the shooting. When asked if he considered using that information to prove Mr. McDonald did not have the firearm, he responded, "I don't remember if I did or didn't. I think it should be done. If I didn't do it, I think that is an error." App. at 42, ll 22-24. He further admitted he was not aware of *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009). The judge in this case, tried three years after the *Belcher* decision, charged the jury they can infer malice from the use of a deadly weapon.

Standard of Review

"Our standard of review in PCR cases depends on the specific issue before us. We defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. We review questions of law de novo, with no deference to trial courts." *Smalls v. State*, 422 S.C. 174, 180–81, 810 S.E.2d 836, 839 (2018)(internal citations omitted)

Argument

Question I

Did the Post Conviction Relief judge err in failing to find trial counsel was ineffective for not securing the services of a crime scene expert when the Post Conviction judge found the testimony of Dr. Brent Turvey would have been helpful but was not an unreasonable decision as the testimony was merely duplicative evidence of what trial counsel believed the evidence would show?

In denying Marquis McDonald's application for Post Conviction Relief, the judge found the testimony of Dr. Brent Turvey helpful. The lower court stated, "Though this court finds that the expert would have been helpful, it was not unreasonable for Counsel to fail to call [an] expert to present duplicative evidence aligning with what he reasonably thought the evidence clearly established." App. at 828. This finding is without evidentiary support. By finding the testimony of the expert helpful, the court acknowledged the testimony was credible. The record is devoid of any evidence that the failure to use this helpful testimony was not prejudicial to Mr. McDonald. The precise issue before this court is whether the failure of defense counsel to call an expert that would be helpful to the defense, constituted ineffective assistance of counsel.

In the Rule 59e Motion, counsel called to the attention of the judge that what trial

counsel's believed the theory to be is not evidence. App. at 811. Defense counsel could have the most logical defense ever known in the courts, but if trial counsel does not present evidence to support the theory, the theory is useless. In this case the prosecutor had a theory substantially different from that of trial counsel. An expert was needed to refute the theory of the state.

In his closing argument, defense counsel attempted to use the testimony from the witnesses to the advantage of Mr. McDonald. He argued that the bullet came from within the automobile. App. at 628, ll 8-11. He also argued the bullets struck the white SUV next to Mr. McDonald's car. App. at 628, ll 18-21. He did not argue the angle of the entry of the bullet. Dr. Turvey's testimony shows the importance of the angle of entry of the bullet. His testimony established that the angle of entry made the fact that the shots were fired outside of the car improbable. App. at 26, l 22 to 27, l 5. Trial counsel did not argue the importance of only one shell casing being found outside on the ground. Dr. Turvey did discuss the importance of this fact. App. at 27, ll 17-20. Trial Counsel further argued "Now if I'm seated in the driver's side of the car, it is impossible for me to have shot him, just as it's impossible for me to have shot him if I'm standing outside the car." App. at 629, ll 6-9. Defense counsel never explained how it was impossible for Mr. McDonald to have shot Mr. Liddell while standing up. This was in fact the state's theory. Without an expert, defense counsel had no means to explain why the shooting could not have occurred standing up outside of the automobile. While defense counsel had a theory, he neglected to develop this theory during the trial as he failed to call a crime scene expert to support his theory. Nor was his cross-examination of the state's witnesses helpful in developing his theory.

In his closing argument, the solicitor first argued, "They talked about the absence of

crime scene reconstruction. It's irrelevant." App. at 644, ll 19-21. As noted previously, the State did not call a crime scene expert. The State had its own theory. When discussing the bullet holes in the white SUV, the solicitor argued, "And they are not at a severe angle from the side as if somebody was wrestling with a gun and it went through and through them. It's through and through, as if somebody had been pressed up against the car and they're shot in the chest with one exit up the ribs and turns and the other shot goes into his chest popping through that car." App. at 648, l 25 to 649, l 6. No testimony existed to show the bullet turned as described. Without an expert, defense counsel had no basis for trying to explain why the theory of the state was wrong and the theory of the defense was correct. The testimony of Dr. Turvey or a similar expert, was not merely helpful. The testimony was essential to give credibility to the defense theory of the case.

This Court has in the past found trial counsel ineffective for not obtaining the services of an expert to help develop the defense theory of the case. *McKnight v. State,* 378 S.C. 33, 661 S.E.2d 354 (2008); *Ard v. Catoe,* 372 S.C. 318, 642 S.E.2d. 590 (2007). As to the duty to investigate, the United States Supreme Court in *Strickland v. Washington,* 466 U.S. 668, 690–91, (1984) said:

> These standards require no special amplification in order to define counsel's duty to investigate, the duty at issue in this case. As the Court of Appeals concluded, strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.

In this case, trial counsel made no investigation as to the need for a crime scene expert to support defense counsel's theory of the case. A strategic decision not to use an expert was not made after a thorough investigation. In this case, the decision not to use an expert was not made with full, or even some knowledge, as to how an expert could help the defense. When a decision not to use an expert is made without consulting an expert, it cannot be an informed decision. Nor could it be a strategic decision. A decision by trial counsel simply to argue his theory to the jury rather than secure testimony to prove his theory is not a "reasonable decision that makes particular investigations unnecessary."

The expert defense counsel failed to use in this case is not a fringe expert. The testimony of Dr. Turvey does not incorporate a new or novel theories. A crime scene expert has been found by this court to be important in presenting an adequate defense since *State v. Spann*, 334 S.C. 618, 513 S.E.2d 98 (1999). A reasonablely competent defense counsel should have known to at least consult a crime scene expert. Only after consulting an expert can a reasonable decision be made as to trial strategy. As the Oregon Supreme Court has said, "After all, the purpose of requiring attorneys to make a reasonable investigation is to enable them to reasonably consider the costs and benefits of pursuing a given action and thus permit them to make an informed decision." *Farmer v. Premo*, 363 Or. 679, 697, 427 P.3d 170, 181 (2018)

The Post Conviction Relief judge stated, "Counsel's performance is not deficient if he decided to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that could have made a difference at trial." App. 827. The record is devoid of any evidence that the failure to call an expert was part of a strategic decision. The record is devoid of any testimony that any expert retained would not appear at trial. The part of

the statement that is applicable is that the testimony of Dr. Turvey "could have made a difference at trial." Whether the Post Conviction Relief judge mean to include a "not" in that phrase is not known. Obviously trial counsel is deficient if the testimony would have made a difference at the trial.

Nothing in this record suggests that the decision not to call a crime scene expert was a tactical or strategic decision. Trial counsel testified "But, I mean, the crime scene seemed so obvious that in hindsight I wish I had an expert." App. at 39, ll 22-24. This statement by trial counsel simply demonstrates that trial counsel failed to appreciate the fact that trial counsel's belief as to what the evidence shows, is not admissible before the jury, except in closing argument. The state and defense counsel had totally different views as to what the evidence showed. An expert would have helped the jury understand why the theory of defense counsel was more logical.

Trial counsel could not have relied upon cross examination to argue his theory of the case to the jury. The crime scene people who gathered the evidence admitted they were not experts and could not give opinions to support the theory of the trial counsel. App. At 385, ll 9-24; 346, ll 6-21; 274, l 10 to 275, l 18; 387, ll 14-16. Thus, he could not have made a strategic decision to promote his theory through the cross-examination of the state's witnesses.

"Without a doubt, '[a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.' When evaluating the reasonableness of counsel's conduct, 'the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.'" *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007(internal citations omitted)). Without the testimony of

a crime scene expert, the case came down to competing theories in closing arguments. For a defense lawyer to argue a theory with no expert to back him up, does not make "the adversarial testing process work in [this] particular case." As the United States Supreme Court has said, "The paramount importance of vigorous representation follows from the nature of our adversarial system of justice. This system is premised on the well-tested principle that truth—as well as fairness—is 'best discovered by powerful statements on both sides of the question.'" *Penson v. Ohio*, 488 U.S. 75, 84 (1988). And powerful statements only come from powerful preparation and presentation. The preparation and presentation in this case was inadequate.

The performance of trial counsel in this case fell below the Standard required by the Sixth Amendment to the Constitution of the United States of America and Article I, § 14 of the Constitution of the State of South Carolina.

Failure to use shell casing evidence

As part of the failure to investigate and prepare for trial, Mr. McDonald contends that trial counsel was ineffective when he failed to use the exculpatory evidence given to him by the solicitor. The discovery provided to trial counsel included a report that the shell casing found in this case matched a shell casing found in another murder case.[2] Trial counsel was also given information that Mr. McDonald's cell phone showed Mr. McDonald could not have committed that shooting. App. at 42, ll 1-16. When asked about using this evidence, trial counsel said, "I don't remember if I did or didn't. I think it should be done. If I didn't do it, I think that is an error." App. at 42, ll 22-24.

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[2] The Post Conviction Relief judge incorrectly says the shell casing and bullet found at the scene in this case matched the shell casing and bullet found at another scene. The testimony established that only the shell casings matched. Applicant's Exhibit № 3

The problem with the testimony of trial counsel is that he apparently cross-examined SLED agent Sabrina Ann Fellers about the report. He asked:

> Q. (By Mr. McCollum) Now, to your knowledge, the bullet casing, the casing that you found, was that ever matched to anything?
> A. (By Ms. Fellers) I'm not aware of the results of any tests that were conducted.
> App. at 270, ll 5-9.

This examination apparently shows trial counsel was aware of the report of the casing being connected to another shooting. At the Post Conviction Relief hearing trial counsel did not recall the evidence concerning the casing. As he said he should have used the evidence, the decision not to use the evidence is ineffective assistance of counsel. In *Ard*, this court found trial counsel to be ineffective for his failure to cross examine the gun shot residue expert as to their precise findings. The trial counsel was further found ineffective because they did not interview the expert prior to trial to determine how firm they were in their professional belief that the deceased did not fire or was near a weapon when it discharged. Here, defense counsel knew the report would establish that the weapon used in another shooting could not have been fired by his client in another shooting. This report supported the defense theory that Mr. McLain was the shooter.

In failing to hold not using the ballistics report to be ineffective, the Post Conviction Relief judge stated, "This Court finds that evidence of the gun being used in an unrelated murder, connected to the co-defendant and not Applicant had a negative or positive effect on Applicant's guilt in the mind of the jurors." App. at 830. The record is devoid of any testimony that trial counsel considered this aspect of the evidence.[3] The Post Conviction Relief judge should not

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[3] The Post Conviction Relief judge also expressed the theory that the evidence the firearm was used in another shooting could be used to support the theory of the hand of one is the hand of all. App. at 830. First, this was not the theory argued by the state. In fact, the state

base his order upon testimony not presented at the hearing. The Post Conviction Relief judge was simply placing in the order his opinion as to what may have been a valid theory. A judge should not attempt to read the mind of trial counsel. The decision must be based upon testimony actually presented at the hearing.

Here, trial counsel at the trial cross-examined a witness about the ballistics report. When he did not receive the answer he expected, he abandoned the issue. Mr. McDonald testified he discussed the ballistics report with Mr. McCollum prior to trial. App. at 58, l 14 to 59, l 4. Mr. McDonald, contrary to the opinion of the Post Conviction Relief judge, believed the report helped his case. Mr. McCollum expressed the same belief. As the issue was discussed with trial counsel before the trial, trial counsel should not have abandoned this evidence without consulting with his client. The failure to use this exonerating evidence was ineffective assistance of counsel.. As stated in *Ard*, "Accordingly, we find that counsel's decision to not cross-examine Powell on the gunshot residue evidence was not an objectively reasonable strategy." *Id.* at 334, 642 S.E.2d at 598. Nor was the failure of trial counsel in this case to not use the favorable ballistics report "an objectively reasonable strategy."

The representation of Mr. McDonald in this case fell below the standard imposed upon trial counsel under the Sixth Amendment to the Constitution of the United States of America and Article I, § 14 of the Constitution of the State of South Carolina.

Question II

Did the Post Conviction Relief judge err in failing to trial counsel ineffective when

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specifically rejected it. Second, the record is also devoid of any evidence that the shooting and robbery were planned by Mr. McDonald and Mr. McLain.

he failed to object to the jury charge that the jury may infer malice from the use of a deadly weapon?

On October 12, 2009, this court decided *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), extended by *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019). This trial started on October 6, 2014, some five years after the *Belcher* decision. Trial counsel testified at he was not aware that this court had ruled inferring malic from the use of a deadly weapon under some circumstances was no longer permitted. App. at 54, ll l 25 to 55, l 21. Surprisingly, trial counsel had not even read the *Belcher* decision as of the date of the Post Conviction Relief hearing. Nor was he aware of *Burdette*. A reasonably competent trial lawyer who defends those accused of crime should have been aware of the *Belcher* decision at the time of the trial. A reasonably competent trial lawyer should have been aware of the *Burdette* decision by the time of the Post Conviction Relief hearing.

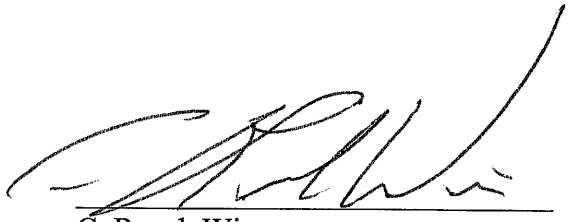
The state argued below that because there was no testimony to mitigate the case to manslaughter or a lesser charge, it was not error to not object to the charge. In this case, the judge charged accomplice liability, when there was no proof of such liability. If the jury used accomplice liability to convict Mr. McDonald, then the jury could have inferred malice as to Mr. McDonald from the use of the firearm by Mr. McLain. Such a use under those circumstances would have been improper. Without testimony of malice as to Mr. McDonald, the jury should not have been told to imply malice as to Mr. McDonald from the use of a firearm by the co-defendant. If the jury did not use accomplice liability, then the state would be correct under the law at the time of the trial.

Rule 1.1 of Rule 407, South Carolina Rules of Professional Conduct, requires that a

lawyer stay abreast of current developments in the law. If one does not stay abreast of the law in the area of law which they represent to the public they are competent to handle, then that lawyer is ineffective. A reasonablely competent defender of those accused of crime would be aware of the *Belcher* decision some 13 years after the decision. A reasonablely competent lawyer would be aware of the *Burdette* decision three years after the case was decided. Trial counsel in this case failed to stay current on the law in the area of the law he elected to practice. Regularly reading advance sheets should be a minimum requirement to be an effective counsel.

CONCLUSION

For the above stated reasons, this Court should grant the petition for writ of certiorari in this matter, dispense with further briefing, reverse the conviction of Marquis McDonald and remand this matter for a new trial.



September 20, 2023

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